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No. 90-1068

Supreme Court, U.S.
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In the Supreme Court of the United States

OCTOBER TERM, 1990

NATIONAL RIFLE ASSOCIATION, ET AL., PETITIONERS

v.

NICHOLAS F. BRADY, SECRETARY
OF THE TREASURY, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

BRIEF FOR THE RESPONDENTS IN OPPOSITION

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QUESTION PRESENTED

Whether the interpretation adopted by the Secretary of the Treasury of the licensing requirements imposed by Congress on the importation, manufacture, or transfer of firearms under the Gun Control Act of 1968, is entitled to deference.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-20a) is reported at 914 F.2d 475. The opinion of the district court (Pet. App. 23a-26a) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on September 13, 1990. A petition for rehearing was denied on October 11, 1990. Pet. App. 21a-22a. The petition for a writ of certiorari was filed on January 3, 1991. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. Interstate transactions in firearms are regulated by the Gun Control Act of 1968, 18 U.S.C. 921 *et seq.* The Gun Control Act imposes licensing requirements on persons engaged in the firearms business, such as importers, manufacturers, dealers, and collectors. Congress authorized the Secretary of the Treasury to promulgate regulations to facilitate enforcement of the Act, and the Secretary in turn delegated that authority within the Department of the Treasury to the Director of the Bureau of Alcohol, Tobacco, and Firearms (BATF).

In 1986, Congress amended the Gun Control Act by enacting the Firearms Owners' Protection Act of 1986, Pub. L. 99-308, 100 Stat. 449. The purpose of the Firearms Owners' Protection Act was to reduce the regulatory burden on law-abiding firearms owners without reducing the BATF's ability to combat violations of the firearms laws. As the court of appeals explained, the Act was designed "to protect the legitimate interests of firearms owners 'while preserving the necessary statutory foundation for legitimate law enforcement efforts.'" Pet. App. 3a (quoting S. Rep. No. 583, 98th Cong., 2d Sess. 1 (1984)). As revised by the Firearms Owners' Protection Act (§ 106, 100 Stat. 459), the Gun Control Act authorizes the Secretary to promulgate "only such rules and regulations as are necessary" to enforce that law. 18 U.S.C. 926.[1]

After the Firearms Owners' Protection Act became law, the Secretary of the Treasury undertook a com-

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[1] The current version of the Gun Control Act provides that "[t]he Secretary may prescribe only such rules and regulations as are necessary to carry out the provisions of this chapter." 18 U.S.C. 926.

prehensive review of the firearms regulations that had been promulgated under the Gun Control Act. After receiving more than 1500 written comments from parties such as petitioner National Rifle Association and others, the Secretary issued a final set of regulations in March 1988. 53 Fed. Reg. 10,490 (1988). See Pet. App. 4a.

2. Petitioners are the National Rifle Association and several individuals and other groups. They brought this action in district court challenging portions of the 1988 regulations and certain preexisting regulations, on the ground that the regulations exceeded the Secretary's statutory authority. Pet. App. 4a. For example, the Gun Control Act requires a firearms dealer to have "premises from which he conducts business" in order to obtain a license. 18 U.S.C. 923(d)(1)(E)(i). The Secretary's original 1968 regulations excluded from the definition of "premises" private dwellings not open to the public.[2] Petitioners challenged that regulation on the ground that it was unduly restrictive. The term "business premises" is "self-defining," petitioners argue, and may include wholly private residences.[3]

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[2] The regulations state that "[a] private dwelling, no part of which is open to the public, shall not be recognized as coming within the meaning of the term [premises]." 27 C.F.R. 178.11. The Firearms Owners' Protection Act did not amend this provision in the 1968 Act.

[3] Petitioners also challenged the Secretary's interpretation of 18 U.S.C. 923(j), which permits a licensee to conduct business temporarily at "a gun show or event sponsored by any national, State, or local organization * * * devoted to the collection, competitive use, or other sporting use of firearms in the community." After the passage of the Firearms Owners' Protection Act, the Secretary construed this language as meaning that both a "gun show" and an "event" must be

Similarly, before 1986 a firearms dealer had to record the acquisition and disposition of firearms held in his business inventory or his personal collection. See 18 U.S.C. 923(c); *United States* v. *Endicott*, 803 F.2d 506, 510-511 (9th Cir. 1986). The Firearms Owners' Protection Act, however, permitted a licensee to sell firearms from his personal collection without complying with the recordkeeping requirements imposed on sales from his business stock, unless the licensee sold a firearm within one year of transferring it from the latter to the former. § 103(4), 100 Stat. 453, *reprinted at* Pet. App. 11a-12a. Since the distinction between a licensee's personal collection and his business inventory hindered the Secretary's ability to trace firearms used in crimes, Congress later again amended the Gun Control Act, requiring that licensees maintain two sets of records: one for firearms in their business inventory, and one for firearms in their personal collection. See Act of July 8, 1986, Pub. L. No. 99-360, § 1(c), 100 Stat. 766-767 (1986), *reprinted at* Pet. App. 12a. See 18 U.S.C. 923(c) (personal collection) and 923(g)(1)(A) (business inventory).[4] The Secretary implemented those re-

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sponsored by the type of organizations specified in Section 923(j). 27 C.F.R. 178.100. Petitioners argue that "gun show" is "self-defining" and that only an "event" need be sponsored by such organizations, not a "gun show."

[4] As thus amended, Section 923(c) imposed the additional requirement that—in cases of disposition of a firearm held in the licensee's personal collection for at least one year—the licensee "shall record the description of the firearm in a bound volume, containing the name and place of residence and date of birth of the transferee if the transferee is an individual, or the identity and principal and local places of business of the transferee if the transferee is a corporation or other business entity: *Provided*, That no other recordkeeping shall be required."

quirements by adopting certain recordkeeping requirements for business inventories and personal collections. See 27 C.F.R. 178.125(e).[5] Petitioners challenge these regulations on the ground that they improperly impose recordkeeping requirements on the sale from a licensee's personal collection of a gun that was not previously part of his business inventory (*e.g.*, where a person had a handgun before he became a licensee).

3. On cross-motions for summary judgment, the district court upheld the regulations outlined above, rejecting petitioners' claim that the Secretary had exceeded his statutory authority. Pet. App. 23a-26a.[6]

Petitioners appealed, and the court of appeals affirmed. Pet. App. 1a-20a. At the outset, the court held that the principles of statutory construction and administrative law discussed in *Chevron U.S.A. Inc.* v. *NRDC, Inc.*, 467 U.S. 837 (1984), are fully applicable to this case because the Secretary had the "primary role in the implementation of this legislation" as well as the "technical expertise essential to determinations of statutory enforcement." Pet. App. 6a.

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[5] The Secretary required licensees to keep records of the receipt and disposition of firearms in their business stock, and to "inventory the firearms possessed for such business" and to record them. 27 C.F.R. 178.125(e). With respect to dispositions from a licensee's personal collection, the regulation states that a licensee is not required to engage in the business recordkeeping if (1) the licensee has maintained the firearm as part of his personal collection for one year; (2) the licensee has properly recorded the receipt of the firearm; and (3) the licensee has entered the sale or disposition of the firearms from his personal collection. See 27 C.F.R. 178.125a.

[6] The district court held invalid a regulation defining the term "manufacture." The Secretary did not appeal that portion of the district court's judgment. Pet. App. 4a n.2.

See *id.* at 4a-8a. On the merits of petitioners' claims, the court determined that (with two exceptions not relevant here, see *id.* at 15a, 17a-18a), the Secretary's interpretation of the Act was consistent with its text and was reasonable. *Id.* at 8a-18a.

ARGUMENT

Petitioners do not directly challenge the Fourth Circuit's ruling that the regulations issued by the Secretary to implement the Gun Control Act and the Firearms Owners' Protection Act of 1986 were reasonable. Instead, petitioners argue that the court below erred in giving any deference to the Secretary's interpretation of those statutes under *Chevron*. That claim does not warrant review by this Court.

1. There is no conflict among the circuits on the questions presented in the petition. Every court that has considered the question whether the Secretary's firearms regulations are entitled to deference has found it appropriate to accord deference to the Secretary's views. *Farmer* v. *Higgins*, 907 F.2d 1041, 1045 (11th Cir. 1990), cert. denied, 111 S. Ct. 753 (1991); *Gilbert Equipment Co.* v. *Higgins*, 709 F. Supp. 1071, 1075, 1077-1078 (S.D. Ala. 1989), aff'd, 894 F.2d 412 (11th Cir. 1990). In addition, there is no conflict among the circuits over the question whether the Secretary's firearms regulations exceed his statutory authority. The Fourth Circuit's decision in this case is the only ruling by a federal court of appeals on that question.

2. Petitioners' claims also lack merit. Petitioners argue that the Secretary's interpretation of the Gun Control Act is not entitled to deference because the Act is a criminal statute that, under the rule of

lenity, must be strictly construed. As the court of appeals correctly noted, however, Pet. App. 8a n.3, the rule of lenity does not prohibit Congress from authorizing a federal agency to adopt regulations implementing a statutory scheme, and therefore does not prevent courts from giving such regulations the deference they deserve. See, *e.g.*, *Young* v. *Community Nutrition Institute*, 476 U.S. 974 (1986) (deferring to the FDA's interpretation of the food and drug laws, a criminal regulatory scheme).

Petitioners mischaracterize the rule of lenity. The rule of lenity is a canon of construction, not a substantive rule of law. It comes into play where there is a "grievous ambiguity or uncertainty in the langauge and structure of the Act," *Huddleston* v. *United States*, 415 U.S. 814, 831 (1974), such that even "[a]fter [a court has] 'seize[d] every thing from which aid can be derived * * *' [it is still] left with an ambiguous statute," *United States* v. *Bass*, 404 U.S. 336, 347 (1971) (quoting *United States* v. *Fisher*, 6 U.S. (2 Cranch) 358, 386 (1805)). The rule of lenity therefore "only serves as an aid for resolving an ambiguity[.] * * * The rule comes into operation at the end of the process of construing what Congress has expressed, not at the beginning as an overriding consideration of being lenient to wrongdoers." *Callanan* v. *United States*, 364 U.S. 587, 596 (1961). See also, *e.g.*, *Moskal* v. *United States*, 111 S. Ct. 461, 465 (1990); *Russello* v. *United States*, 464 U.S. 16, 29 (1983); *United States* v. *Turkette*, 452 U.S. 576, 587-588 n.10 (1981).

The rule of lenity is inapplicable to this case. Congress empowered the Secretary to adopt rules and regulations to implement the Gun Control Act, 18 U.S.C. 926, and the Secretary's exercise of that au-

thority is entitled to deference under *Chevron*. Also, the purpose of the rule of lenity is to give fair warning of prohibited conduct and to ensure that persons are not subjected to criminal prosecutions in the absence of some clear indication that Congress intended to make the behavior criminal. Regulations like the ones at issue here are principally licensing requirements, and any disputes about their scope are more likely to arise in license application, renewal, or revocation proceedings than in criminal prosecutions. Pet. App. 8a n.3.[7] In fact, agency regulations can help further the objectives underlying the rule of lenity by more precisely defining the statutory requirements.

3. The Fourth Circuit's decision to give deference to the Secretary's interpretation of the Gun Control Act is not inconsistent with *FCC* v. *American Broadcasting Co.*, 347 U.S. 284 (1954), or *Crandon* v. *United States*, 110 S. Ct. 997 (1990). *Crandon* involved a common law civil action brought by the United States to enforce a criminal statute, 18 U.S.C. 209, which did not authorize the Department of Justice to adopt implementing regulations. *Crandon* therefore hardly supports the proposition that no deference is due to the Secretary when he issues regulations that Congress has authorized.[8] *American*

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[7] The licensing aspects of the Gun Control Act are enforced by the BATF. By contrast, the authority to bring criminal prosecutions is vested in the Department of Justice. 28 U.S.C. 516.

[8] Petitioners rely heavily on Justice Scalia's concurring opinion in *Crandon*, in which he said that "[w]e have never thought that the interpretation of those charged with prosecuting criminal statutes is entitled to deference." 110 S. Ct. at 1011-1012. Pet. 15-16. That reliance is misplaced for the reason given in the text. What is more, the BATF is a com-

Broadcasting also does not support petitioners' claim. There, this Court held that the FCC had exceeded its statutory authority by adopting regulations that prohibited certain broadcast programs as illegal lotteries. 347 U.S. at 290-297. Although the Court in so ruling relied in part on the rule of lenity, *id.* at 296, the Court did not suggest that agency regulations are not entitled to deference simply because a violation of those regulations could lead to a civil action or a criminal prosecution.

4. Petitioners' final contention is that Congress sought to limit the deference given to the Secretary by enacting the Firearms Owners' Protection Act of 1986. Pet. 20-29. Before 1986, the Gun Control Act authorized the Secretary to "prescribe such rules and regulations as he deems reasonably necessary to carryout the provisions of this chapter." 18 U.S.C. 926 (1982). The Firearms Owners' Protection Act of 1986, however, revised Section 926, which now provides that "[t]he Secretary may prescribe only such rules and regulations as are necessary to carry out the provisions of this chapter." Petitioners argue that the 1986 revision was intended "to eliminate most of the regulations adopted by the [BATF] under the Gun Control Act" and remove any discretion the Secretary has to issue regulations other than ones that are strictly necessary to enforce that law. Pet. 21-22.

As the court of appeals noted, the Senate Report makes clear that Congress revised the Gun Control Act in this manner simply to eliminate redundant language in the statute. Pet. App. 7a (quoting S.

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ponent of the Department of the Treasury, and the Secretary of the Treasury does not have the authority to prosecute criminal cases. The Department of Justice has that responsibility. 28 U.S.C. 516.

Rep. No. 583, *supra*, at 27). As the court of appeals noted, the authority to issue "necessary" regulations means that the Secretary has discretion to decide what regulations are "necessary." Pet. App. 6a. Petitioners belittle the Senate Report and rely instead extensively on floor statements by various members of Congress. This Court has often made clear, however, that such floor statements are not entitled to the same weight as a relevant committee report. See, *e.g.*, *Thornburg* v. *Gingles*, 478 U.S. 30, 43 n.7 (1986); *Garcia* v. *United States*, 469 U.S. 70, 76 & n.3 (1984); *Zuber* v. *Allen*, 396 U.S. 168, 186 (1969) (committee reports represent "the considered and collective understanding of those Congressmen involved in drafting and studying the proposed legislation"). Floor statements are entitled to little weight when they conflict with such reports. *Milwaukee* v. *Yeutter*, 877 F.2d 540, 544 (7th Cir.) (floor statements are "unreliable because no one may have been there when the words were delivered"), cert. denied, 110 S. Ct. 500 (1989).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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